

1 **UNITED STATES COURT OF APPEALS**
2 **FOR THE SECOND CIRCUIT**

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4 **SUMMARY ORDER**

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6 **THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER**
7 **AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY**
8 **OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY**
9 **OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR**
10 **IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.**
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12 At a stated term of the United States Court of Appeals for the Second Circuit, held at the
13 Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York on
14 the 20th day of September, Two Thousand and Six
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16 PRESENT:

17 HON. RICHARD J. CARDAMONE,
18 HON. ROGER J. MINER,
19 HON. CHESTER J. STRAUB,

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21 *Circuit Judges.*
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24 EDDIE L. MILLER,

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26 *Plaintiff-Appellant,*

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28 v.

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30 NEW YORK CITY HEALTH AND HOSPITALS
31 CORPORATION, KINGS COUNTY HOSPITAL,

32
33 *Defendants-Appellees.*
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35
36 **SUMMARY ORDER**

37 05-5573-cv

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39 Appearing for Plaintiff-Appellant: Eddie L. Miller, *pro se*, New York, New York

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41 On submission for Defendant-Appellee: Elizabeth S. Natrella, City of New York Law
42 Department, New York, New York

43 Appeal from the United States District Court for the Southern District of New York.

44 **AFTER ARGUMENT AND UPON DUE CONSIDERATION, IT IS HEREBY**
 ORDERED, ADJUDGED AND DECREED that the judgment of the district court be and it

1 hereby is **AFFIRMED**.

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4 Plaintiff-appellant Eddie L. Miller, *pro se*, appeals from a judgment of the United States
5 District Court for the Southern District of New York (P. Kevin Castel, *J.*) granting the
6 defendants-appellees' motion for summary judgment in his action alleging employment
7 discrimination and fraud. We assume the parties' familiarity with the underlying facts and
8 procedural history. We affirm for the reasons stated by the District Court. All of Miller's
9 employment discrimination claims were either time-barred, *see Elmenayer v. ABF Freight Sys.,*
10 *Inc.*, 318 F.3d 130, 133-34 (2d Cir. 2003), or failed to demonstrate that the City had made any
11 employment decisions based on his race or protected activity, *see Mandell v. County of Suffolk,*
12 316 F.3d 368, 377-78 (2d Cir. 2003) (explaining that plaintiff has the initial burden of
13 establishing a *prima facie* case of discrimination). Additionally, Miller's fraud claim was
14 asserted well past the applicable statute of limitations. *See* N.Y. Unconsol. § 7401(2).

15 We have considered all of Miller's arguments and found them unavailing. Accordingly,
16 and for the foregoing reasons, the judgment of the District Court is hereby **AFFIRMED**.

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19 FOR THE COURT:
20 Roseann B. MacKechnie, Clerk
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By: _____